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## JAMES MADISON ON RELIGION AND POLITICS: RHETORIC AND REALITY

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**T**he recent *Oregon v. Smith* decision's shifting of the burden in free exercise cases from legislatures to minority religious claims has brought fierce opposition, most conspicuously from leading nonpreferentialist Richard J. Neuhaus, who sees in it the foundation of majority tyranny. Against *Smith*, Neuhaus employs Madison's "Memorial and Remonstrance Against Religious Assessments," which is universally read to argue that the superiority of religion to politics proscribes majoritarian hegemony over religious practices. I contend that the Memorial's appeals are better understood as rhetoric than as reflecting Madison's true view. I find Madison hostile not only to religious establishments but also to religion itself. This hostility was the basis of his rejection of the nonpreferentialists' utility-based argument for government support of religion. In this light, I uncover a curious historical irony: the nonpreferentialist Neuhaus seeks today to protect religion from hostility by adhering to a position that was originally animated, in key respects, by hostility both to religion and to its nonpreferential support.

**T**he Supreme Court's recent ruling in the "peyote case," *Department of Human Resources of Oregon et al. v. Smith et al.* (1990) has brought fierce opposition, most notably from leading nonpreferentialist Richard J. Neuhaus. The *Smith* opinion, written by Justice Scalia, upholds as an "unavoidable consequence of democratic government" the "relative disadvantage" of minority religion. Neuhaus fears this rationale will "leave religion naked in the face of state power" (1990, 42). Against what he views as Scalia's naked majoritarianism, Neuhaus offers his and Michael McConnell's interpretation of Madison's "Memorial and Remonstrance Against Religious Assessments." McConnell (1990) voices the consensus view, which interprets the Memorial to argue that religious freedom is "unalienable because it is a duty to God rather than a privilege of the individual,"

so that "even the mighty democratic will of the people is, in principle, subordinate to the commands of God, as heard and understood in the individual conscience" (pp. 1497, 1516).

I shall radically depart from the unanimous view of Madison interpreters that the Memorial represents Madison's true view regarding the superordination and subordination of religious and political obligation, respectively.<sup>1</sup> I argue that the Memorial's explicit religious appeals are better understood as rhetoric than as expressions of Madison's conviction that politics is "subordinate" to God's "commands." Moreover, I find Madison's thought hostile not only to religious establishments (as is well known) but also—contrary to the language of the Memorial and to its consensus interpretation—hostile, in important respects, to revealed religion itself. On the latter basis

Madison was led largely to reject the utility-based argument for government support of "general religion." In light of my analysis of Madison's deepest intentions, I find a curious historical irony in nonpreferentialist opposition to *Smith*: the nonpreferentialist Neuhaus seeks today to protect religion from hostility by adhering to a position that was originally animated, in key respects, by hostility both to religion and to its nonpreferential support.<sup>2</sup>

### The Memorial Examined

The scholarly consensus correctly stresses the religious appeal of the Memorial,<sup>3</sup> which begins by invoking the Deity through a quotation from the Virginia Declaration of Rights: it is a "fundamental and undeniable truth, 'that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence.'" This duty is also an "unalienable right" both because of its necessity to meeting divine obligation and due to the fact that human opinion cannot be compelled to "follow the dictates of other men" (art. 1). This opening argument sets the document's tone. Throughout, the harmony between natural rights doctrine and Protestantism is highlighted.

Duty to "our Creator" is of such dignity that it transcends civil society itself; that is, unlike our other rights, the absolute exercise of which we barter in exchange for the protection of civil society, "in matters of Religion, no man's right is abridged by the institution of Civil Society and . . . Religion is wholly exempt from its cognizance."<sup>4</sup> This owes to the fact that religious duty is "precedent, both in order of time and degree of obligation, to the claims of Civil Society" (art. 1). In relation to civil society, duty to God is primary in both senses of the term. Thus, the

separation of church and state concretizes the divine order: politics is demoted to a secondary status. Separation is a means to the realization of true religion, which, according to dissenting Protestant thought, is achievable only through the meeting of the individual conscience with the word of God, as found in Scripture. The individual's relationship to God is the one thing needful, in comparison with which the claims of the majority pale.

While religious establishments corrupt both church and state, "just government" (which is instituted to perpetuate liberty) needs no establishment. It will be supported precisely to the extent that it protects religious freedom—through the maintenance of sect equality—"with the same equal hand which protects . . . person and property" (art. 8). Thus, the needs of politics and religion cohere: the separation of each from the other is necessary both to salvation and to good government. As true religion is best supported when least mixed with politics, just government is most likely to be sustained when its only function with regard to religion is the protection of religious freedom from both private individuals and from government itself.<sup>5</sup>

Concluding as it began, with an invocation of the Deity, the Memorial "earnestly pray[s]" that the Supreme Lawgiver will illuminate the members of the legislature to "turn . . . from every act"—and therefore from Henry's assessments bill—"which would affront [God's] holy prerogative," in order to render themselves and their constituents "worthy of his blessing." Those favoring government support of teachers of the Christian religion have strayed from God's path, endangering not only the piety of the commonwealth but also its "liberties, . . . prosperity, and . . . happiness" (art. 15).<sup>6</sup>

As this necessarily brief examination demonstrates, there is no denying the variety of pious appeals in the Memorial.<sup>7</sup> The recurring theme—literally the first

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and last argument of the Memorial—is the claim that both revealed religion (meaning, in particular, dissenting Protestantism) and natural rights doctrine testify to the subordinate character of civil society in its relation to, as McConnell puts it, “the commands of God” (1990, 1516).

But was this justification for separation—religion’s superiority to politics—Madison’s final judgment on the subject? Might he have utilized his audience’s Protestant beliefs in church–state separation to fulfill a project neither Protestant nor even religious but, instead, hostile, in key respects, to religion? The need to address these questions emerges on a comparison of the Memorial with other of Madison’s discussions of the subject.

### *Federalist 10*

Wholly unnoticed by Madison scholars, in *Federalist 10* Madison presents an understanding of religion and republican government that is somewhat at odds with the Memorial. There he addresses the “mortal disease” of republican government, faction, which can be neutralized by either “removing its causes” or “controlling its effects” (Madison, Hamilton, and Jay 1961, 77). There are also two methods of removing faction’s causes. The first, destruction of liberty, promises also to destroy “political life,” which is qualitatively distinct from the master–slave relation. The second poses the more serious alternative, elicits a longer and more substantive response, and first raises the issue of politics and religion. It consists in “giving to every citizen the same opinions,” passions, and interests. But this agenda is “as impracticable as the first would be unwise,” for it ignores the diversity fixed in human nature. Natural diversity results from the coupling of liberty with fallible human reason. But the marriage of error and freedom does not, of itself, produce faction: citizens may

approach their differences with indifference, or at least toleration, in light of the recognition of their shared fallibility. But the further conjunction of fallible reason with self-love prevents this: “As long as the connection subsists between [a man’s] reason and his self-love, his opinions and passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves” (p. 78). The ineluctable combination of error and self-love prevents the separation of passion from opinion in political activity. Radical homogeneity of opinions, passions, and interests is impracticable because it depends on the abolition of the connection that subsists between fallible reason and selfishness.

Nature lays a further obstacle to uniformity: “The diversity in the faculties of [men is no less] an insuperable obstacle.” Arguing that the right to acquire property originates in the natural hierarchy of talents, a politics in accordance with human nature must regard as its first object the “protection of these faculties,” and with them, their fruits (Madison, Hamilton, and Jay 1961, 78). But the protection of diverse and unequal talents gives rise to diverse and unequal fruits (“different degrees and kinds of property”). From the influence of this diversity and inequality in property on “sentiments and views” arises a corresponding societal division “into different interests and parties.”

Human nature thus revolts against radical homogeneity as the result of factors that while conceptually distinct, interact with and reinforce each other; the thread connecting both is selfishness. Fallibility made clinging by self-love, and the effect on sentiments and views of differences in property, together with the influence of each on the other, provide a natural standard for government. But adhering to this standard, i.e., allowing for the unimpeded fulfillment of the vari-

ety of human excellences, understood here primarily in the context of productive capacities, gives rise to the very divisions that threaten the stability and justice on which that fulfillment depends. Human nature is both the source of, and a problem for, good government.

While "sown" in our nature, the power of the two sources of faction—"opining" and economics—varies with the circumstances of society. Thus, Madison proceeds to list the different expressions resulting from these two sources, beginning with the "reciprocal influence" of "opinions and passions":

A zeal for different opinions concerning religion, concerning government, and many other points, . . . an attachment to different leaders ambitiously contending for preeminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind, . . . inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other. (Madison, Hamilton, and Jay 1961, 79)

This famous passage simultaneously illuminates various manifestations of the first cause of faction and obscures others. Clearly, it is natural to opine about the public good and the proper form of government. But at the same time, the reader's attention is drawn to the obscurity of the last example on the list—the attachment to "persons of other descriptions." Clearly, these are not political actors in the precise sense. But why the obscurity-producing reticence on this cause and not the others? I contend that Publius is referring here to the world's great religious figures.

My thesis is supported by Madison's letter to Jefferson of 24 October 1787 (1962-, vol. 10, pp. 206–19). This lengthy correspondence, written one month before *Federalist* 10 was published, is the virtual first draft of that paper. Assuming that a private letter to a trusted friend<sup>8</sup> would reveal more fully than a public statement the deepest thoughts of its

author, there emerges a distance between the public and private Madison on the status of revealed religion.

In this letter Madison rejects the usefulness of religion as a rights-protecting "restraint" on the "bulk of mankind who are neither Statesmen nor Philosophers." Further, he not only rejects religion that has "kindled into enthusiasm" but argues that "even in its *coolest state*" religion "has been much oftener a motive to oppression than a restraint from it" (1962-, vol. 10, pp. 213–14; emphasis mine).<sup>9</sup> Given the friendship expressed for religion in the Memorial, this letter is somewhat shocking: While the Memorial stresses the harmony between piety and liberty, the letter not only rejects religion as a remedy for faction but also views it as a frequent source of oppression. Not only is it much oftener an agent against liberty, but even at its most moderate ("in its coolest state"), religion is much oftener tyrannical than liberating. But is this a merely historical observation (to whose truth a believer could agree), or does Madison regard the truth of his observation to follow from the very nature of revealed religion?

While the letter's explicit criticism of religion is omitted from the published *Federalist* 10, the basis for that criticism begins to emerge from the latter's teaching on the political implications of human nature. My examination of that essay left off when questioning the identity of, and reason for, Madison's obscure reference to "persons of other descriptions." If even the coolest religion is much oftener a source of, not a remedy for, faction, might Madison's "persons of other descriptions" refer to the great religious leaders who kindled the people's interest into enthusiasm? It would be no small matter if he regarded the likes of Moses, Christ, and Muhammed as, in the final count, destructive of their followers' ability to "cooperate for their common good" (Madison, Hamilton, and Jay 1961, 79).

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But note the change in verb tense in his list: while personal attachment is rendered both to "different leaders" and to "persons of other descriptions," the former describes an allegiance to those who were at that time actively contending for power, whereas the latter describes an attachment to those whose fortunes "*have been* interesting to the human passions" (emphasis mine). The use of the perfect tense in the latter signals that these fortunes have excited interest from the past up to the present. This implies that at some point these persons were no longer with those who struggled in their names. Certainly Europe's great religious wars were fought in the name of a man long since gone. Note, further, that the letter to Jefferson likewise employs the perfect tense: even the coolest religion *has been* much oftener oppressive than liberating. But these grammatical considerations are not intended to be dispositive; more important is the historical consideration to which they point. From the standpoint of history, it appears unlikely that Madison's description could apply to other than the world's great religious figures; for what persons other than the political leaders already listed have excited *and* continue to excite their followers to the point that they become divided and inflamed?

Circumstantial evidence for my interpretation is the light it sheds on the immediate sequel. There Madison finds the power of "animosities" such that even absent a substantial occasion, the "most frivolous and fanciful distinctions have been sufficient to kindle" unfriendly passions and the "most violent conflicts" (Madison, Hamilton, and Jay 1961, 79). Note that again the perfect tense is used. Further, as with the "persons of other descriptions," no example is given of a "frivolous . . . distinction." What is clear here is that the marriage in human nature of error and self-love gives rise to conflict. Further, the prior passage linked the

power of "persons of other descriptions" to their appeal to the passions. Passion (used in *Federalist* 10 interchangeably with *self-love*), in its connection to reason, was listed earlier as a cause—if not *the* cause—of homogeneity's impracticability. If the power of religious leaders lies in their appeal to the passions and passion in assemblies "wrest[s] the scepter from reason," might Madison view as primary among the "most . . . fanciful distinctions" something like a Thirty Years War over the issue of Protestantism versus Catholicism? (*Federalist* 55: 342; see also Diamond 1981, 71). This interpretation is provisional, for it assumes that Madison here relegates religion and its leaders' appeals to the realms of passion and fancy. In contrast, the Memorial explicitly argues that religion somehow transcends, while cooperating with, human reason. To substantiate this provisional interpretation requires examining *Federalist* 37, in which Madison addresses the subject of epistemology and, with it, the status of revelation.

### A Madisonian Digression on Reason Versus Revelation

In *Federalist* 37, in an apparent digression,<sup>10</sup> Madison reflects on the obscurity that must accompany human communication: "And this unavoidable inaccuracy . . . [is proportional] to the complexity and novelty of the objects defined. When the Almighty himself condescends to address mankind in their own language, his meaning, luminous as it must be, is rendered dim and doubtful by the cloudy medium through which it is communicated" (Madison, Hamilton, and Jay 1961, 229).

While the divine is omniscient, its messages to humanity require the "cloudy medium" of speech. This alone does not deny the pious possibility that prophets can receive God's message through in-

spiration. But their attempt to communicate the divine way to uninspired humanity requires the cloudy medium of words, which "render dim and doubtful" the Almighty's meaning. The most striking inference to be drawn from this passage is that if inaccuracy grows with the "complexity and novelty of the object," the Bible, Torah, Koran, and so on, in addressing subjects no less complex than the nature of and duties owed God, must exceed other books in doubtfulness. But is this a veiled attack on the cognitive status of revelation or simply a recognition, shared by many a believer, of the mysterious character of the divine?

This issue is addressed more explicitly in a private letter to Dr. Caldwell of 1825 (1884, vol. 3, pp. 504-5). Here Madison "reject[s] the idea maintained by some divines, of more zeal than discretion," that the rational discernment of nature is an insufficient "road . . . to nature's God." Not only is natural reason simply sufficient for Madison, but "all the knowledge" of nature's God that preceded its "written revelation" is argued to be "derived from," and thereby relegated to the status of, an "oral tradition" (p. 505). This appears both to reveal the full but veiled thrust of *Federalist* 37 and to question the Memorial's sincerity in simply harmonizing the gods of revelation and nature. Of course, many believers agree that their holy texts derive from an oral tradition, albeit one that is divinely inspired. And asserting the simple sufficiency of natural reason does not deny that the conclusions of revelation can agree with those of reason. However, it raises the deeper question of the cognitive status by which an oral tradition's agreement with reason can be deemed an authoritative *confirmation*, since the simple sufficiency of reason implies the superfluity of revelation. From the believer's standpoint, the superfluity of revelation denies its existence simply; for the superfluous cannot be at the same

time (and as the believer holds) the one thing needful for humanity.<sup>11</sup>

In this light, Madison's project for religious liberty is theoretically grounded in the denial of human capacity to know the nature and existence of the commands of—and thus the duties toward—revelation's God. It appears that we have come some distance from the apparent Protestantism of the Memorial. This is not to deny the influence of Locke's natural theology on eighteenth-century U.S. Protestantism (see Pangle 1988, 21-24). But the core of Protestantism, certainly at that time, continued to be the indisputable authority of Scripture. It has been seen that the primacy of religious conscience is justified for Protestantism by its belief in the accessible truth of the Bible (see also 2 Timothy 3:16-17 and 2 Peter 1:20).

In this light, we can infer that faction and bloodshed stemming from differences over the content of a "dim and doubtful" oral tradition are the height of irrationality (and must therefore be centered in the passions, for Madison). *Federalist* 10 argued that it was the fortunes of "persons of other descriptions" that "have been interesting to the human passions." We see now why Madison locates this appeal in the passions; for after his analysis of revelation, what must Madison say of the reliability of the sources that report the fortunes of the religious founders?

If the identification of *Federalist* 10's "persons of other descriptions" is accepted, then the list of the "opining" causes of faction opens ("a zeal for different opinions, concerning religion") and closes ("persons of other descriptions") with religion. While positive appeals to revealed religion constitute the first and last arguments of the Memorial, *Federalist* 10 appears to disclose revealed religion, among the manifestations of the opining faculty, to be literally the first and the last cause of oppression. Such arguments are hardly the stuff of Protestantism or of any

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revealed religion, but represent instead a characteristically Enlightenment critique of religion.

Religion is again addressed near the end of *Federalist* 37. While Madison's chief aim here has been to explain the difficulties faced by the convention, he concludes by finding cause for "real wonder" over its unprecedented unanimity despite such difficulties. So unexpected was this feat that "it is impossible for any man of candor to reflect on this . . . without partaking of the astonishment. It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently . . . extended to our relief in the critical stages of the revolution" (Madison, Hamilton, and Jay 1961, 230–31).<sup>12</sup>

Note the care with which Madison writes. He appears initially to say that candor requires a pious astonishment at the convention's unanimity, but a rereading suggests that the reader is given the choice of viewing the matter with either "candor" (reason?) or piety. While he is silent as to where he stands in this dichotomy, the thrust of his earlier analysis of revelation suggests his doubt of providence. His silence here parallels both his obscure reference to "persons of other descriptions" and the veiled manner of his public reflections on the status of revelation.

The foregoing sufficiently indicates Madison's doubt of the God of revelation. The doubt is presented in published writings but is not an open attack on revealed religion.<sup>13</sup> Nor does that doubt leave humanity without transcendent moral and political guidance. Madison finds such in "the transcendent law of nature and of nature's God." This law is the "absolute necessity of the case"—"the great principle of self-preservation" (*Federalist*, 279). In a private letter to the Reverend Mr. Beasley of 1825 (1900–1910, vol. 9, pp. 230–31), he clarifies the distance between the duties arising from

human origins in the state of nature as opposed to the Garden of Eden. Here he responds to Beasley's request for his opinion of Beasley's rational "Proof of the Being and Attributes of God." He refers Beasley to Samuel Clarke's (1735) "celebrated" *Discourse*, which claimed to prove rationally the goodness, immortality, omnipotence, and perfect wisdom of God. Not only does Madison appear to commend Clarke's work, he also offers his strongest endorsement of religion's utility: "the belief in a God All Powerful wise and good, is so essential to the moral order of the World and to the happiness of man, that arguments which enforce it cannot be drawn from too many sources" (pp. 230–31). But he signals his reservations with Beasley's—and by implication, Clarke's—"abstract" ideas by recommending in their place "reasoning from the effect to the cause, 'from Nature to Nature's God,'" as the "more universal and more persuasive application." His reservations grow greater still in the letter's final paragraph, which argues that the human mind, confronted with infinity,

*prefers at once the idea of a self-existing cause to that of an infinite series of cause and effect, which augments, instead of avoiding difficulty; . . . it finds more facility in assenting to the self-existence of an invisible cause possessing infinite power, wisdom and goodness, than to the self-existence of the universe, visibly destitute of those attributes. . . . In this comparative facility of conception and belief, all philosophical reasoning on the subject must perhaps terminate.* (p. 231, emphasis mine)

This passage is striking. Granting the *utility* of the belief in God's power, wisdom, and goodness, it remains the case that "all philosophical reasoning on the subject must perhaps terminate" in mere "comparative facility." But Beasley and Clarke intend to prove that such assent is rationally justified. While he concedes these proofs' "effect on some," Madison grants neither here nor elsewhere that



philosophical reasoning can prove God's goodness. To the contrary, the finiteness of human understanding "betrays itself . . . especially when it contemplates . . . infinity." In fact, the only basis he explicitly offers for assent to these notions is its greater facility, or ease, which the mind prefers and on which happiness depends. The political relevance of Madison's doubt that philosophic reason can prove God's goodness is that it undergirds his position that the laws of nature and of nature's God provide the "more universal and more persuasive application" necessary to morality and happiness. How they do so requires grasping religion's utility.

While the Beasley letter grants the utility of religion, how can this be reconciled with the October letter's censure of even the coolest religion? Madison apparently views as useful religion that squares with "reasoning from the effect to the cause." This is consistent with the Memorial, where the political conclusions from the laws of nature's God (religious toleration) are assumed to harmonize simply with duty to revelation's God (Christian charity). Thus, whether or not Madison believes reason can prove God's goodness, it is clear that his teaching on nature's God aims publicly to harmonize reason's political direction with revelation's teaching of God's goodness. Such harmony is necessary to persuade those referred to in the October letter as the "great bulk of mankind who are neither Statesmen nor Philosophers."

Understanding his belief in religion's utility, including the alleged harmony between nature's laws and revelation's duties, requires understanding his view of what today is called the "religious impulse." In an 1833 letter to the Reverend Jasper Adams, Madison writes, "There appears to be in the nature of man what ensures his belief in an invisible cause of his present existence, and anticipation of his future existence" (1900-1910, vol. 9, pp. 484-87). He then rejects Adams's call

for a stronger church-state alliance with an argument that appeared 10 years earlier in a letter to Professor Everett: "There are causes in the human breast, which ensure the perpetuity of religion without the aid of the law" (cited in Alley 1985, 84). As in the 1825 Beasley letter, Madison says in neither of the latter letters that the ineradicable belief in God is divinely implanted. He says only that it is found in human nature, and facility is the only explicit basis that he offers for such belief. Further, so intransigent are these notions that their support by law is unnecessary. In short, he is able qualifiedly to grant religion's utility while denying the need for government to nurture this expedient.<sup>14</sup> Notice that this perfectly harmonizes his private teaching of religion's utility with the Memorial's public teaching that government should not support religion.

How the teaching on nature's God produces the more persuasive and universal effect on the religious impulse emerges fully from considering what can be inferred to be Madison's critique of Christianity. While he views religious belief as natural and, when made to accord with reason, "essential" to morality and happiness, *Federalist* 10's analysis of human nature implies that Christianity's aspiration to the radical overcoming of natural selfishness aims at what experience shows to be "impracticable." Without denying that a certain restraint results from this attempt, he can be inferred to regard the unnaturalness of such restraint to give rise to a tension or anger in the soul—from which, perhaps, springs the oppressive tendency of even "coolest" religion. Further, the denial of nature implicit in this attempt may set the stage for additional—and more violent—rejections of a natural standard: "reasoning" may tend increasingly to fall to passion. The claim to wisdom that transcends and at times contradicts nature's laws, coupled with an unnatural suppression of the love for the

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things of this world, appears, then, to explain Madison's condemning such an ethos as a leading cause of the spilling of blood over the "most frivolous and fanciful distinctions."<sup>15</sup>

The preceding analysis produces a balanced portrait of the nature and extent of Madison's assent to religion's utility and explains his confidence in the more persuasive public teaching on nature's God. In sum, while religion is natural, ineradicable, and morally salutary, this must be balanced against his charge (in a 1792 essay) that neither morality nor happiness but slavery has been humanity's general lot (cited in Padover 1953, 43-44). As a remedy to this, religion has been worse than inadequate. But if it, like faction's other causes, is both natural and divisive and if destroying the liberty essential to it is a "remedy that is worse than the disease," to what remedy is the friend of popular governments to look? (Madison, Hamilton, and Jay 1961, 77, 78). In the same 1792 essay, Madison answers, "The people ought to be enlightened." While ineradicable, religion can be "awakened," that is, moved from reliance on an oral tradition toward nature's God. The Memorial's attempt publicly to harmonize the biblical God with nature's God is a brilliant example of such an enlightening effort. By publicly harmonizing revelation and natural rights doctrine, the latter's "more universal and persuasive application" promises to demystify the former. But the great force behind Madison's project for liberty lies not in theological education per se but in its effects on the souls of the citizens of life in an extended commercial republic. To this theme Madison devotes the remainder of *Federalist* 10.

### *Federalist* 10 on Politics and Religion: Part II

*Federalist* 10 finds the second major cause of faction to be "the various and

unequal distribution of property." Madison's remedy to this cause relies on multiplying, in order to highlight, conflict over *kinds* of ("various") property, in contrast to *amounts* of property. Madison learned from Adam Smith that regulating various interests is the principal task of "modern legislation" emerges only in modern, or democratized, commerce (Madison, Hamilton, and Jay 1961, 79). The latter, unlike ancient commerce, affects the behavior, nature, opinions and habits of the majority to an extent heretofore unachieved. Further, while democratized commerce inculcates commercial habits in the people generally, it serves also to focus their commercial allegiances on the various interests into which they have been fragmented, thereby downplaying awareness of, and conflict over, amounts of property. The democratization of commerce exercises both a uniting and a dispersing function, and the interaction of both is instrumental in remedying the effects of faction.<sup>16</sup>

In explaining his remedy to property-based faction, Madison further examines the relation of politics and religion. Crucial to this relation is that individuals focus on local pursuits and away from potentially fatal struggles over basic principles. The fragmentation required for liberty and served by multiplicity cannot exercise its intended effect in the absence of "opposite and rival interests," specifically, widespread acquisitiveness (see Diamond 1971). This root of the "most common and durable" source of faction is also prerequisite to effective fragmentation of multiple interests. This channeling of rival interests, according to *Federalist* 55, remedies humanity's general lack of "better motives" (Madison, Hamilton, and Jay 1961, 322). If natural selfishness cannot be simply negated, government, "the greatest of all reflections on human nature," must seek instead to moderate selfishness through multiplying its foci (p. 322). The coalition process is driven by

the citizens' recognition that to satisfy their selfish aims, they must come down to the "brokerage level"—at which a majority comprised of diverse interests, religions, and geographies can agree. Creating unity out of extraordinary multiplicity compels, for merely selfish reasons, the moderation of the most extreme claims of all. While *Federalist* essays 52–83 contain arguments for the need for other-regarding virtue in the people and in their representatives, the durability of selfishness appears to be the foundation on which *Federalist* 10 rests.

Religion enters this political analysis and process thus. The fragmenting effects of multiple interests depend on acquisitiveness. But this poses a certain tension with an ethos that regards lucre as filthy and teaches that the love of money is the root of all evil (1 Peter 5:2). The character-forming effects of democratized commerce promise to weaken the soul's crusading tendency, that is, to counteract the call to subordinate this world and the body to higher pursuits. Selfishness made rational by institutional restraints is the ethos encouraged by the multiplicity-of-interests scheme—in obvious tension with the pronouncement "How hardly shall they that have riches enter into the kingdom of God" (Luke 19:24).<sup>17</sup>

Religion is affected politically not only by fostering acquisitiveness but also by multiplicity of sects. With gentleness that is appreciable only in light of the October 1787 letter, *Federalist* 10 states that a sect "may degenerate into a political faction" locally but sect multiplicity will prevent its ranging across the nation (Madison, Hamilton, and Jay 1961, 84; emphasis mine). The political concern (liberty) requires that no majority religious faction be formed. The more religions the better, because each sect is smaller and more dispersed and thus "unable to spread a general conflagration" (p. 84). But this political concern is in tension with religion: believers qua believers desire not the

diminution in their own sect concomitant with sect multiplicity but, rather, their sect's enlargement at the expense of other sects. In this sense, Madison's requirement of sect multiplicity signals and implements the primacy of the political over the religious. True, religious multiplicity was a given in his day, but it was also much more for him than a constraint to which he had to accommodate himself; it was a blessing for liberty.

Multiplicity of interests and multiplicity of sects thus look to and require each other. The former dampens the otherworldly emphasis by which religion "kindle[s] into enthusiasm," supplying in its place commerce's lower but more sober virtues of industry, mildness, and thrift (see Hirschman 1977, 42–66). Sect multiplicity renders even this milder state of piety less capable of concerted action. This double blow was for Madison the foundation of his project to blunt religion's tendency to "oppress." In Madison's republic, the need to compromise whittles away at religion's extremes; majority formation amid economic and sect multiplicity requires appeals to the "more persuasive and universal" laws of nature. Clearly, he recognized that sources other than religion can equally destroy liberty "under different circumstances." But *Federalist* 10's list of the causes of faction begins and ends with religion due to the particular circumstances he envisions. Given his aim to subordinate dispute over amounts to dispute over *kinds* of property, faction stemming from opinion (religion in particular) most threatens republicanism; for revealed religion generally imperils the prudent egoism on which the multiplicity of interests scheme depends. The "new science of politics," in turn, depends on this scheme to ground its recommendation of the new Constitution "to the esteem and adoption of mankind" (Madison, Hamilton, and Jay 1961, 80–81).

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### Elements of the Current Debate in Light of Madison's Free Exercise Views

But is not my interpretation of Madison's view of religion contradicted by his concern over its free exercise? Malbin notes Madison's attempt to insert into the Virginia Declaration of Rights the protection of all but those religious practices that (in Madison's words) violate "equal liberty" and "manifestly endanger" the state's existence (1978, 22). Even in the more moderate Memorial, Madison's thrust is to place the standard for valid free exercise largely within the conscience of the individual believer.<sup>18</sup>

This question returns us to the *Smith* debate. It has been seen that Neuhaus's critique relies on the view that Madison's expansive free exercise understanding is grounded in the superiority of God's commands. Against my findings it could be argued that Madison's friendship with religion is signaled by his concern to prevent the restrictions justified in *Smith*. But even to grant both the Memorial's and the private Madison's opposition to *Smith* does not disprove—and may even further confirm—my thesis if Madison's approach to free exercise is an additional means to neutralize politically the already-diluted piety that emerges from the coalition process.

My argument begins with an analysis of Madison's 1792 essay, "Property." Here he distinguishes between material property and property that individuals have in their opinions, religion, persons, and faculties (1962–, vol. 14, 266–68). *Federalist* 10 argues that "protect[ing] these faculties is the first object of government." The essay "Property" finds conscience to be the "most sacred" property, being a "natural and unalienable right." While the essay "Property" links conscience to "religious rights," the precise nature of that linkage emerges in Madison's letter to Jefferson of 17 October 1788, which

responds to the call to include religious freedom in the proposed Bill of Rights. While he desires such constitutional protection, Madison fears that "the rights of conscience, in particular, if submitted to a public definition would be narrowed much more than they are likely ever to be by an assumed power." His example of such narrowing is the objection by some that the prohibition on religious tests "opened the door for Jews, Turks, and infidels" (1962–, vol. 11, p. 297). "Infidels," at that time, included atheists (see Glenn 1987, 349). In this light, the protection of "religious rights" also includes the protection of atheism. The essay "Property," then, argues that the freedom to believe or not to believe in God is the "most sacred" property that government is instituted to protect. Why?

It has been seen that the freedom of the mind's status as a natural and inalienable right is for Madison known only through reason, not through an oral tradition. While absolute necessity, the law of nature's God, signals the primacy of self-preservation, good government, for Madison, aims at more than this. It aims to protect the faculties, or the mind's freedom, in recognition of the highest human capacity. We have seen that this is the condition by which humanity will be "enlightened," by which it will escape its history of "slavery" and the role that servitude to the "mysteries" of religion has played in that history. In this light, separation aims not only at the free, but also at the rational, society.

But the conditions of enlightenment require a defense against the darkness. While the freedom of reason is threatened both by religion's dependence on an oral tradition and by its "much oftener" oppressive politics, the expansive protection of religious rights (as Madison wishes them defined) is the precondition for the protection of the freedom of reason. This is because in protecting religious rights from its usually religiously motivated

suppression, the freedom of reason is likewise protected. In this light only, one appreciates the full significance of the fact that when he wrote to Jefferson of the successful passage of their bill for religious liberty in Virginia in 1785, Madison signaled his pride in their victory over not the opponents of religious liberty precisely, but rather over those who would make "laws for the human mind" (1962-, vol. 8, p. 473). Madison's careful choice of phrase here is perfectly consistent with his efforts to deprive religious majorities of the power to discourage reason's development. Reason thus protected, adherence to an oral tradition could be replaced by guidance from the laws of nature. In this sense, for Madison, the liberation *from* revealed religion required the liberation of revealed religion.

These reflections provide a framework in which to place Madison's expansive free exercise understanding. Such protection is necessary only for religious minorities; only their practices will conflict with democratic laws. *Federalist* 10 is less concerned with minority religion's effect on liberty; a minority faction "will be unable to execute and mask its violence under the forms of the Constitution" (Madison, Hamilton, and Jay 1961, 80). Only a majority religious faction possesses the legal power to implement its designs. By radically privatizing free exercise, Madison sought to lessen the moral and legal force of majority religion. This explains his attempt to remove from the Virginia Declaration of Rights Mason's "happiness of the community" standard as a valid basis for restricting free exercise, offering in its place only the criterion of "manifest" danger to "equal liberty" and the "existence of the state."

An expansive free exercise understanding grounds and furthers the multiplicity solution, the foundation of Madison's project. Such an understanding also provides an additional fence against the already-moderated piety that emerges

from multiplicity. Not the superiority of God's commands but the denial of political power to majority religious factions explains Madison's view that religious freedom (rather than religion) transcends majority will. An expansive free exercise understanding aids his project for the radical privatization of religion—in a manner wholly consistent both with the end of liberty and with a significant degree of hostility to revealed religion in light of that end. So certain is he that the beliefs in God and immortality are ineradicable that he appears to entertain no fears that the dilution and radical privatization of religion may in time threaten those beliefs and thus the morality and happiness to which he grants they are essential. Being firmly planted in the "human breast," the salutary effects of these beliefs require no legal aid. What is most required is preventing religiously motivated majorities from imposing less-than-rational public policies. His confidence in both the ineradicability of these potentially salutary (when diluted) beliefs and in the sufficiency of the commercial virtues justifies for him the simple goodness of his diluting project.<sup>19</sup>

In light of Madison's intentions, non-preferentialist opposition to *Smith* presents a curious historical irony. The non-preferentialist position on religious establishment (favoring government support of "general religion") appears to harmonize best with the (pre-*Braunfeld*)<sup>20</sup> articulation of the "secular regulation" rule for free exercise. This rule declares invalid laws that either do not serve a legitimate, secular governmental end or that aim at particular sects. But having met this standard, the fact that a law violates certain religious duties neither invalidates it nor requires religious exemptions. As the case history suggests, the aggrieved parties in such cases (e.g., Mormons, Christian Scientists, Jews, and Seventh Day Adventists) are usually not included in the majority's, or "general," religion.

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Thus, while the secular regulation rule treats both majority and minority religions neutrally by requiring all to obey valid laws, no law particularly offensive to general religious sentiments is likely to be passed. If the majority of U.S. citizens belonged (like the respondents in *Smith*) to the Native American Church, it is unlikely that the ingestion of peyote as a sacramental rite would be illegal. Thus, the practical political "other side" of the secular regulation rule's neutrality is that only minority religions are likely ever to have their practices restricted. *Smith* upholds this as "unavoidable" in a "democratic government."

For this very reason, the secular regulation rule appears to "support" general religion in the sense that all laws agreeable to the latter are enforced even on disagreeing sects. In this light, Madison's radical free exercise is not so much a protection of religion as it is a protection of nongeneral religion. In this sense, not only does it offer general religion no support, but from the nonpreferential standpoint it also to a certain extent deprives general religion of the capacity to codify the moral precepts that define it. Further, to the extent that restricting various minority religious practices diminishes minority sect membership, this supports the unity at which the nonpreferentialists' support for general religion aims.

Thus, one would think that Neuhaus and all who favor government support of general religion would welcome *Smith* if in fact it restores the "secular regulation" rule, and to the extent that this restoration serves to codify and thus to uphold for public reverence the moral and legal standards underlying majority, or general, religion. But Neuhaus may view the majority culture today—or perhaps the elites who legislate and adjudicate for majority culture—as secular and anti-religious. Therefore, fearing secular power as much as Madison feared religious power, he may now see in Madi-

son's radically privatized free exercise understanding a refuge from that secular power. If this is the case, it would be both historically ironic and a testimony to the Memorial's rhetorical success that *Smith's* nonpreferentialist critics should seek today to protect religion from hostility by adhering to a position that was originally animated, in key respects, by hostility both to religion and to its nonpreferential support.

Finally, my analysis raises—but cannot answer—a deeper question: Did Neuhaus, in crafting his own "Memorial" against *Smith*, learn Madison's lesson in rhetoric? While the answer lies beyond the scope of this essay, it can at least be inferred from my examination of Madison's aims that if Neuhaus is correct in seeing the new danger to religious liberty not in religious hostility but in hostility to religion, then Madison, whose concern all along was to protect political liberty from tyrannical majorities, might grant Neuhaus's use of his free exercise understanding—inverted as I have shown that use to be.

### Conclusion

While I have contested the consensus view that Madison's project for religious liberty stems from his belief that government is subordinate to God's commands, I in no way deny the explicit harmony between dissenting Protestantism and the Memorial. As has been seen, Protestant adherence generally to the primacy of religious conscience, to the view that property is God's reward for toil, and to the view that church-state separation is necessary to salvation, provided Madison an audience that was at least in part receptive to his arguments.

But I have sought to demonstrate that contrary to the Memorial's pious appeals, Madison and dissenting Protestantism come to their formal agreement from opposite poles. The view that God's commands outrank the merely natural or

political, on the one hand, and Madison's view that an oral tradition is inferior and in certain respects hostile to nature's laws and to a government grounded in them, on the other, can both agree that politics and religion should be radically separated. In this light, dissenting Protestantism's political utility consists in part of the fact that its belief in the simple transcendence of God's word, accessible only to the individual conscience, aided Madison in his quest to relegate revealed religion to the realm of the radically, because politically undisturbing, private. In sum, in all but its politically salutary features, religion would be gagged by its own liberty.

### Notes

I thank Gerard Bradley, Matthew Franck, Morton Frisch, and Christopher Wolfe for thoughtful criticisms.

1. The Memorial, addressed to the Virginia Assembly, opposed Patrick Henry's "Bill Establishing a Provision for Teachers of the Christian Religion." The scholarly consensus finds in the Memorial's religious appeals the argument that true piety requires strict separation of church and state. Levy sees the Memorial as a mix of Baptist preacher John Leland's influence with that of the "deistic Jefferson," implying that Madison's thought stands between the two (1986, 168). Levy also finds in the Memorial Roger Williams's argument that the integrity of religion depends on "private conscience, untarnished by government" (1987, 91-92). Riemer likewise couples Madison and Williams (1989, 15-23; see also Reichley 1985, 88, 91, 93). Murray finds the Memorial grounded in the "essentially theological" argument that "religion is of its nature a . . . matter of the individual conscience" (1949, 29). Brann views the Memorial's argument for the superiority of divine to political obligation to be the "crux . . . of the work" (1984, 19).

Similarly, the Court, in *Abington Township School District v. Schempp* (1963), finds in Madison, Williams, and Jefferson the true understanding of church-state separation. The Memorial's immense influence is shown by its being appended (by the dissenting Rutledge) to the landmark *Everson v. Board of Education of Ewing Council* (1947) case. No other state paper has ever been so authoritatively singled out by the Court, and with good reason: in the U.S. political tradition, Madison is one of the two most authoritative authors on the subject of

religion and politics. His Memorial is our substantively most important and politically and historically most influential text on that subject.

2. This essay cannot pretend to settle the broader issue of "the Founders on religion." Nonetheless, the coming to grips with the deepest intentions of the man known as "Father" of both the Constitution and the Bill of Rights is a first but essential step toward answering the larger question.

3. This is especially apparent when comparing the Memorial (1962-, vol. 8, 298-304) with Jefferson's bill (1950-, vol. 2, p. 305; see Sandler 1960). For scholarly consensus, see n. 1.

4. This argument, grounding radical separation on the superiority of religion to politics, is recognizable in Roger Williams's writings. When Williams called for a "wall of separation" in 1643, he was articulating the fundamentalist Christian view that because Christ's kingdom is "not of this world," to mix politics and religion corrupts both (1963, 362).

5. Madison divides the Memorial into 15 articles. This argument of the eighth article is the Memorial's intellectual and literal core. It argues, again agreeing with Roger Williams, that the kingdoms of Christ and of the civil magistrate must be separated so long as humanity is separated from God. That the "Truth may be made flesh" in the future requires the separation of church and state at the present. According to this strand of dissenting Protestant thought, piety and liberty, far from being in tension with each other, are, instead, mutually dependent.

6. While its pious appeals are my focus, on viewing the Memorial in its entirety, one is struck by the heterogeneity of its arguments. They include appeals to the fear of tyranny (article 15 warns that the assessments bill may lead the legislature also to control the press, abolish trial by jury, and despoil suffrage rights), reverence for the Virginia Declaration of Rights, the nobility of the Revolutionary War, the fear of property loss, the fear of future religious persecution, anti-Catholic prejudice and the specter of the Old World's Inquisition atmosphere, the pride of Christians (suggesting that an establishment will raise suspicions as to their confidence in Christianity), the desire to increase the state's population and prestige, the sanctity of law, and the people's pride (arguing that they merit full consultation prior to the passage of any law). Indeed, it would be as hard to name an interest or concern to which Madison does *not* appeal as it would be to find a better example of the role and activity of public persuasion in democratic statesmanship.

7. At the same time, the restrained nature of its pious appeals (in deistic style, it never mentions God but instead uses *Creator* and *Lawgiver*) may explain the initially surprising fact that another petition on the same subject received more than three times as many signatures as the now-famous Memorial. This

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more popular petition argued that the assessments bill both was contrary to the "Spirit of the Gospel" and would not check "that Deism with its baleful influence [which] is spreading itself over the state" (cited in Rutland 1985, 203-4). On Madison's attempt to hide his authorship of the Memorial, see Rutland's editorial note in Madison 1962-, vol. 8, pp. 295-98 and Brann 1984, 12-13.

8. Malone argues that "the friendship between Jefferson and Madison was one of the greatest in history" (1985, 303).

9. McConnell (1990, 1452) neglects or dismisses this letter in arguing that "none of Madison's writings displayed the disdain Jefferson expressed for the more intense manifestations of religious spirit."

10. See Epstein's analysis of this digression (1984, 114-18).

11. This interpretation reveals both the breadth and depth of a statement on religion that appears only in the notes Madison gathered in 1791 on the subject of extrastructural influences on government: "the cave of Jupiter in Crete where Minos, Epimenides and Pythagoras pretended to have received a divine sanction to their laws" (1961-, vol. 14, p. 163; see Morgan 1988, 149). See also Madison's *National Gazette* essay of 20 December 1792: "Mysteries belong to religion, not to government" (cited in Padover 1953, 43-44).

12. The only uses of the term *Almighty* in the entire *Federalist Papers* are in *Federalist* 37. God is also mentioned twice: *Federalist* 18 reports an ancient battle fought to "avenge the violated god" (Madison, Hamilton, and Jay 1961, 124). *Federalist* 43 mentions God in responding to the question "on what principle the Confederation . . . can be superseded without . . . unanimous consent": "[By] recurring to the absolute necessity of the case; to the great principle of self-preservation; to the transcendent law of nature and of nature's God" (p. 279; emphasis mine). Both essays were written by Madison. (See also *Federalist* 19, p. 133.) The only use of the word *providence* occurs in *Federalist* 2, the most pious essay in *The Federalist Papers*, written by Jay. See Epstein's discussion of *Federalist* 2 (1984, 19-21), but note Hamilton's dismissal of it at the beginning of *Federalist* 6 (Madison, Hamilton, and Jay 1961, 53).

13. Ketcham (1985, 184) wholly denies my interpretation. He finds Madison hostile only to "enthusiasts' and New England theocracy," which "hardly amounts to hostility toward religion." Like McConnell, he neglects or dismisses the October letter to Jefferson. While Ketcham grants that Madison "relished Voltaire's devastating jibes at religion," he regards as a proof of Madison's piety his "cordial support" from "various religious groups."

Ketcham also regards Madison's letters to William Bradford as proof of his piety (1985, 181). In one letter, Madison recommends "becoming fervent advocates in the cause of Christ." In another, he writes of "the need to have our names enrolled in the annals of

Heaven" but one sentence later writes that he does not "expect a long or healthy life" (1900-1910, vol. 1, p. 10). Ketcham grants the relation of these undoubtedly pious letters to Madison's illness at the time. Alley notes that in addition to his fear of an early death, Madison was severely depressed at this time over the death of a close friend (1985, 23). Moreover, Madison wrote these pious letters between the ages of 21 and 24. No doubt a deathbed conversion can survive the false prospect of imminent demise and guide the convert thereafter. But as the young Madison's sickness and fear of a premature death faded, so did his pious letters. Such sentiments appear nowhere in the record of the remaining *six decades* of his life. For these reasons, coupled with the statements we do possess from his adult life, the Bradford letters are proofs only of Madison's piety at this early stage in his life.

14. In the Adams letter, Madison identifies Christianity as "the best and purest" religion. While this may further confirm the dependence of his arguments on the makeup of his audience, at the same time, Protestantism appears to harmonize best with his political project. Thus, while he did not exempt it from his criticism of even "coolest" religion, no doubt he had Protestantism in mind in his praise of the Christian religion.

He makes a parallel argument in his 1822 letter to Edward Livingston, where he stamps as an "old error" the view that without an alliance, neither government nor religion can be "duly supported" (1900-1910, vol. 9, pp. 100-03). Here he argues, as in the Memorial, that separation has produced greater "purity of religion." If this praise of pure religion is more than rhetoric, what might it mean? His 1821 letter to the clergyman F. L. Schaeffer points to an answer: "A mutual independence [of church and state is] most friendly to *practical religion*, to social harmony, and to political prosperity" (1900-1910, vol. 3, p. 242; emphasis mine). This is repeated in the Everett letter. Mere toleration "is no security for public quiet and harmony" (cited in Alley 1985, 84). In this light, pure religion is practical religion, which fosters "public quiet" and "political prosperity"; in other words, pure religion is guided by nature's, not revelation's, God. So guided, this constitutes what Madison called in 1799 religion's "genuine lustre" (1900-1910, vol. 6, p. 336), whose truth cannot "be tested by numbers" and which refers to a "religion" that denies to revelation any status other than that of an oral tradition (cited in Fleet 1946, 558).

15. From this it might be inferred that for Madison, guidance from such sources tends to take the natural desire for immortality in the direction of episodes like the Crusades. The etymology of *crusade* may provide the basis of his critique: linked to the Latin *crux* (cross), a crusade is animated by the purpose of putting aside the things of this world in pursuit of a higher end, for example, the recovery of the sepulcher of Christ. Madison can be inferred to



view the consequences of the Crusades (wholesale slaughter, persecution, the sacking of Constantinople) to have been implicit in its animating ends, as expressed in Pope Urban II's 1095 Clermont address: "I urge you men . . . to exterminate this race [the Turks]. *Christ commands it*. . . Let those who have worked for *wages* now work for an *eternal reward*" (cited in Boak 1959, 228-29, emphasis mine).

16. Before presenting this remedy, Madison turns first to reject reliance on moral and religious motives to control the effects of faction: "If the impulse and the opportunity . . . coincide, . . . neither moral nor religious motives can be relied on" (Madison, Hamilton, and Jay 1961, 81). Note the dilution of this statement in comparison with the October 1787 letter, where religion was found to be much worse than merely an inadequate control. Note the similarly mild treatment in the first public formulation of this argument in his essay "Vices of the Political System of the United States" of April 1787: "Religion in its coolest state is *not infallible*, it may become a motive to oppression *as well as* a restraint from it" (1962-, vol. 9, pp. 350-51; emphasis mine). Unless one assumes a radical transformation in Madison's thought in the few weeks between the letter and the publication of *Federalist* 10, the latter's diluted language, like much of the rhetoric of the Memorial, must be interpreted as politically necessary in the more pious atmosphere of 1787.

17. At the same time, Protestantism generally is more friendly to property than is Catholicism (see Tocqueville 1969, vol. 2, p. 530). That its relative harmony with the multiplicity-of-interests scheme did not serve to exempt it from Madison's condemnation of religion suggests that while he was aided by this Protestant view, he did not regard this harmony to be decisive.

18. The Memorial states, "It is the duty of every man to render to the Creator such homage and only such as he believes to be acceptable to him" (art. 1) making it decidedly more latitudinarian on free exercise than is Jefferson's bill (Jefferson 1950-, vol. 2, 305; Malbin 1978, 22-29).

19. Madison's true intentions clarify a key point of contention in the current debate over the relation of the free exercise to the establishment clause. For Madison, there is not the contradiction that non-preferentialists find between the post-Everson interpretation of the establishment clause and the Court's dismantling of the "secular regulation" rule prior to *Smith*. This is not to deny the charge that while *Everson* requires government neutrality between religion and irreligion in matters of establishment, cases such as *Sherbert v. Verner* (1963) and *Wisconsin v. Yoder* (1972) grant exemptions from valid laws precisely on account of religious beliefs (see Wolfe 1987, 85-89). But while these decisions disjoin the clauses on the issue of neutrality, the clauses

marry in furthering the radical privatization of religion. Thus, the Court is correct that this view of the two clauses conforms with Madison's project.

20. See *Braunfeld v. Brown*'s enunciation of a new and more rigorous standard for evaluating legislation challenged on free exercise grounds.

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